IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1235 of 2007

Prabhakaran .. Petitioner

Vs

1. State, rep. by its Secretary
   to Government, Food, Co-operation
   and Consumer Protection Department
   Secretariat, Chennai-600 009.

2. District Collector and
   District Magistrate,
   Villupuram District, Villupuram.

3. Additional Secretary to
   Government, Department of
   Consumer Affairs, Government of
   India, Room No.270, Krishi
   Bhavan, New Delhi.1 .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.N.R.Elango
APP for RR1 and 2
: Mr.P.Kumaresan, ACGSC/R-3

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, brother-in-law of the detenu, by name Rajangam, who was incarcerated at Central Prison, Cuddalore, pursuant to the order of detention dated 16.7.2007 passed by the second respondent under the provisions of the Tamil Nadu

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Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Black Marketeer, seeks a Writ of Habeas Corpus to set aside the order of detention and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. On 10.7.2007, the police party attached to Civil Supplies CID Unit, Cuddalore, while engaged in surveillance near G.S.T. Road, at the backyard of an oil shop, found the detenu in possession of a plastic can with full of 50 litres of kerosene oil and on interrogation, he disclosed that he collected kerosene oil from the card holders at a lower price and stored huge quantity of kerosene in barrels and used to sell the same at a higher price. The detenu was arrested and his confession statement was recorded, on the basis of which a case in Crime No.226 of 2007 on the file of CSCID, Cuddalore was registered. The detenu was, later, produced before the learned Judicial Magistrate No.II, Villupuram for remanding into judicial custody.

3. The second respondent, taking note of the above case as a ground case, having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public distribution of essential commodities, ordered his detention dubbing him as a Black Marketeer.

4. The main contention of the learned counsel for the petitioner is that when there is no supporting material to show that the detenu is a habitual offender, the detaining authority erred in observing in the grounds of detention that his activities reveal that he is a habitual "Black Marketeer", which is totally an incorrect statement of fact and an error apparent on the face of record, which vitiates the detention order.

5. On perusal of the grounds of detention, we find that in para 3, the detaining authority has stated that the detenu is a habitual Black Marketeer. But, whereas there is absolutely no material either available in the grounds of detention or served to the detenu to show that he is a habitual Black Marketeer, which, is an error apparent on the face of record and therefore, we are convinced that the detaining authority has not applied his mind on this aspect while passing the order of detention and hence, the same gets vitiated.

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In the result, the impugned order of detention is quashed and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
   Food, Co-operation and Consumer
   Protection Department
   Secretariat, Chennai-600 009.

2. The District Collector and
   District Magistrate,
   Villupuram District, Villupuram.

3. The Additional Secretary to
   Government, Department of
   Consumer Affairs, Government of
   India, Room No.270, Krishi
   Bhavan, New Delhi.

4. The Superintendent,
   Central Prison, Cuddalore.

5. The Joint Secretary
   to the Government of Tamil Nadu,
   Public (Law and Order) Department,
   Fort St George, Chennai 9.

6. The Public Prosecutor,
   High Court, Madras.

MS(CO)
SR/22.11.2007

H.C.P.No.1235 of 2007

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